

1 CENTER FOR DISABILITY ACCESS  
2 Amanda Seabock, Esq., SBN 289900  
3 Chris Carson, Esq., SBN 280048  
4 Dennis Price, Esq., SBN 279082  
5 Mail: PO Box 262490  
6 San Diego, CA 92196-2490  
7 Delivery: 9845 Erma Road, Suite 300  
8 San Diego, CA 92131  
9 (858) 375-7385; (888) 422-5191 fax  
10 amandas@potterhandy.com

11 Attorneys for Plaintiff

12  
13 UNITED STATES DISTRICT COURT  
14 NORTHERN DISTRICT OF CALIFORNIA

15 **Scott Johnson,**

16 Plaintiff,

17 v.

18 **29-41 South Jackson, L.P.**, a  
19 California Limited Partnership;  
**29-41 South Jackson, LLC**, a  
20 California Limited Liability  
Company;  
**SNGO Inc.**, a California  
Corporation; and Does 1-10,

21 Defendants.

22 **Case No.**

23 **Complaint For Damages And**  
**Injunctive Relief For Violations**  
**Of:** American's With Disabilities  
Act; Unruh Civil Rights Act

24 Plaintiff Scott Johnson complains of 29-41 South Jackson, L.P., a  
25 California Limited Partnership; 29-41 South Jackson, LLC, a California  
26 Limited Liability Company; SNGO Inc., a California Corporation; and Does 1-  
27 10 ("Defendants"), and alleges as follows:

28 **PARTIES:**

1. Plaintiff is a California resident with physical disabilities. Plaintiff is a

1 level C-5 quadriplegic. He cannot walk and also has significant manual  
2 dexterity impairments. He uses a wheelchair for mobility and has a specially  
3 equipped van.

4 2. Defendants 29-41 South Jackson, L.P. and 29-41 South Jackson, LLC  
5 owned the real property located at or about 29 S. Jackson Avenue, San Jose,  
6 California, in January 2019.

7 3. Defendants 29-41 South Jackson, L.P. and 29-41 South Jackson, LLC  
8 owned the real property located at or about 29 S. Jackson Avenue, San Jose,  
9 California, in March 2019.

10 4. Defendants 29-41 South Jackson, L.P. and 29-41 South Jackson, LLC  
11 own the real property located at or about 29 S. Jackson Avenue, San Jose,  
12 California, currently.

13 5. Defendant SNGO Inc. owned Shop-N-Go located at or about 29 S.  
14 Jackson Avenue, San Jose, California, in January 2019.

15 6. Defendant SNGO Inc. owned Shop-N-Go located at or about 29 S.  
16 Jackson Avenue, San Jose, California, in March 2019.

17 7. Defendant SNGO Inc. owns Shop-N-Go (“Store”) located at or about 29  
18 S. Jackson Avenue, San Jose, California, currently.

19 8. Plaintiff does not know the true names of Defendants, their business  
20 capacities, their ownership connection to the property and business, or their  
21 relative responsibilities in causing the access violations herein complained of,  
22 and alleges a joint venture and common enterprise by all such Defendants.  
23 Plaintiff is informed and believes that each of the Defendants herein,  
24 including Does 1 through 10, inclusive, is responsible in some capacity for the  
25 events herein alleged, or is a necessary party for obtaining appropriate relief.  
26 Plaintiff will seek leave to amend when the true names, capacities,  
27 connections, and responsibilities of the Defendants and Does 1 through 10,  
28 inclusive, are ascertained.

1                   **JURISDICTION & VENUE:**

2         9. The Court has subject matter jurisdiction over the action pursuant to 28  
3         U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with  
4         Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

5         10. Pursuant to supplemental jurisdiction, an attendant and related cause  
6         of action, arising from the same nucleus of operative facts and arising out of  
7         the same transactions, is also brought under California's Unruh Civil Rights  
8         Act, which act expressly incorporates the Americans with Disabilities Act.

9         11. Venue is proper in this court pursuant to 28 U.S.C. § 1331(b) and is  
10         founded on the fact that the real property which is the subject of this action is  
11         located in this district and that Plaintiff's cause of action arose in this district.

12                   **FACTUAL ALLEGATIONS:**

13         12. Plaintiff went to the Store in January 2019 (twice) and March 2019 with  
14         the intention to avail himself of its goods, motivated in part to determine if the  
15         defendants comply with the disability access laws.

16         13. The Store is a facility open to the public, a place of public  
17         accommodation, and a business establishment.

18         14. Parking spaces are one of the facilities, privileges, and advantages  
19         offered by Defendants to patrons of the Store.

20         15. Unfortunately, on the dates of the plaintiff's visits, the defendants did  
21         not provide accessible parking in conformance with the ADA Standards.<sup>1</sup>

22         16. Currently, the defendants do not provide accessible parking in  
23         conformance with the ADA Standards.

24         17. Entrance into the Store is another one of the facilities, privileges, and

---

25                   <sup>1</sup> For example, there was no access aisle that accompanied the parking stall ostensibly reserved for persons  
26         with disabilities. On information and belief there are other issues with the parking that render it non-  
27         compliant. Those issues will be fleshed out in discovery and inspections. The plaintiff seeks to have fully  
28         compliant parking provided.

1 advantages offered by Defendants to patrons of the Store.

2       18. Unfortunately, on the dates of the plaintiff's visits, the defendants did  
3 not provide accessible door hardware in conformance with the ADA  
4 Standards.

5       19. Currently, the defendants do not provide accessible entrance in  
6 conformance with the ADA Standards.

7       20. Plaintiff personally encountered these barriers.

8       21. By failing to provide accessible facilities, the defendants denied the  
9 plaintiff full and equal access.

10      22. The lack of accessible facilities created difficulty and discomfort for the  
11 Plaintiff.

12      23. The defendants have failed to maintain in working and useable  
13 conditions those features required to provide ready access to persons with  
14 disabilities.

15      24. The barriers identified above are easily removed without much  
16 difficulty or expense. They are the types of barriers identified by the  
17 Department of Justice as presumably readily achievable to remove and, in fact,  
18 these barriers are readily achievable to remove. Moreover, there are numerous  
19 alternative accommodations that could be made to provide a greater level of  
20 access if complete removal were not achievable.

21      25. Plaintiff will return to the Store to avail himself of its goods and to  
22 determine compliance with the disability access laws once it is represented to  
23 him that the Store and its facilities are accessible. Plaintiff is currently deterred  
24 from doing so because of his knowledge of the existing barriers and his  
25 uncertainty about the existence of yet other barriers on the site. If the barriers  
26 are not removed, the plaintiff will face unlawful and discriminatory barriers  
27 again.

28      26. Given the obvious and blatant nature of the barriers and violations

1 alleged herein, the plaintiff alleges, on information and belief, that there are  
2 other violations and barriers on the site that relate to his disability. Plaintiff will  
3 amend the complaint, to provide proper notice regarding the scope of this  
4 lawsuit, once he conducts a site inspection. However, please be on notice that  
5 the plaintiff seeks to have all barriers related to his disability remedied. See  
6 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff  
7 encounters one barrier at a site, he can sue to have all barriers that relate to his  
8 disability removed regardless of whether he personally encountered them).

9

10 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS  
11 WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all  
12 Defendants.) (42 U.S.C. section 12101, et seq.)

13 27. Plaintiff re-pleads and incorporates by reference, as if fully set forth  
14 again herein, the allegations contained in all prior paragraphs of this  
15 complaint.

16 28. Under the ADA, it is an act of discrimination to fail to ensure that the  
17 privileges, advantages, accommodations, facilities, goods and services of any  
18 place of public accommodation is offered on a full and equal basis by anyone  
19 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.  
20 § 12182(a). Discrimination is defined, *inter alia*, as follows:

- 21       a. A failure to make reasonable modifications in policies, practices,  
22           or procedures, when such modifications are necessary to afford  
23           goods, services, facilities, privileges, advantages, or  
24           accommodations to individuals with disabilities, unless the  
25           accommodation would work a fundamental alteration of those  
26           services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 27       b. A failure to remove architectural barriers where such removal is  
28           readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are

1 defined by reference to the ADA Standards.

2 c. A failure to make alterations in such a manner that, to the  
3 maximum extent feasible, the altered portions of the facility are  
4 readily accessible to and usable by individuals with disabilities,  
5 including individuals who use wheelchairs or to ensure that, to the  
6 maximum extent feasible, the path of travel to the altered area and  
7 the bathrooms, telephones, and drinking fountains serving the  
8 altered area, are readily accessible to and usable by individuals  
9 with disabilities. 42 U.S.C. § 12183(a)(2).

10 29. When a business provides parking for its customers, it must provide  
11 accessible parking in compliance with the ADA Standards.

12 30. Here, the lack of accessible parking in compliance with the ADA  
13 Standards is a violation of the law.

14 31. When a business provides an entrance, it must provide an accessible  
15 entrance in compliance with the ADA Standards.

16 32. Here, no such accessible entrance has been provided in compliance with  
17 the ADA Standards.

18 33. The Safe Harbor provisions of the 2010 Standards are not applicable  
19 here because the conditions challenged in this lawsuit do not comply with the  
20 1991 Standards.

21 34. A public accommodation must maintain in operable working condition  
22 those features of its facilities and equipment that are required to be readily  
23 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

24 35. Here, the failure to ensure that the accessible facilities were available  
25 and ready to be used by the plaintiff is a violation of the law.

1           **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL  
2           RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.  
3           Code § 51-53.)

4           36. Plaintiff repleads and incorporates by reference, as if fully set forth  
5           again herein, the allegations contained in all prior paragraphs of this  
6           complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,  
7           that persons with disabilities are entitled to full and equal accommodations,  
8           advantages, facilities, privileges, or services in all business establishment of  
9           every kind whatsoever within the jurisdiction of the State of California. Cal.  
10          Civ. Code §51(b).

11          37. The Unruh Act provides that a violation of the ADA is a violation of the  
12          Unruh Act. Cal. Civ. Code, § 51(f).

13          38. Defendants’ acts and omissions, as herein alleged, have violated the  
14          Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s  
15          rights to full and equal use of the accommodations, advantages, facilities,  
16          privileges, or services offered.

17          39. Because the violation of the Unruh Civil Rights Act resulted in difficulty,  
18          discomfort or embarrassment for the plaintiff, the defendants are also each  
19          responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-  
20          (c).)

21          40. Although the plaintiff was markedly frustrated by facing discriminatory  
22          barriers, even manifesting itself with minor and fleeting physical symptoms,  
23          the plaintiff does not value this very modest physical personal injury greater  
24          than the amount of the statutory damages.

25  
26  
27  
28

## **PRAYER:**

Wherefore, Plaintiff prays that this Court award damages and provide relief as follows:

1. For injunctive relief, compelling Defendants to comply with the Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the plaintiff is not invoking section 55 of the California Civil Code and is not seeking injunctive relief under the Disabled Persons Act at all.

2. Damages under the Unruh Civil Rights Act, which provides for actual damages and a statutory minimum of \$4,000 for each offense.

3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

Dated: May 16, 2019

CENTER FOR DISABILITY ACCESS

By:

*[Signature]*

Amanda Seabock, Esq.  
Attorney for plaintiff